HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP M/S No. 213/05
Surat Singh
Vs
State of Uttaranchal & others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 21.7.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 213 (M/S) OF 2005

Surat Singh
S/o Shri Bhag Singh
R/o Vill. Samalta, Post Samalta
Tehsil Kalsi, District Dehradun. .....Petitioner

Versus

1. State of Uttaranchal through secretary, Panchayati Raj, Civil Secretariat, Dehradun.
2. District Magistrate, Dehradun.
3. District Panchayat Raj Officer, Dehradun.

..... Respondents

21.07.2006

Sri Rajendra Dobhal, Counsel for the petitioner.
Standing Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri D.C.S. Rawat, Brief holder of Rajendra Bobhal, Counsel for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing order dated 03.03.2005 (annexure no.3 to this writ petition) passed by the District Magistrate, Dehradun respondent no.2.

Briefly stated, the petitioner was elected as Gram Pradhan of Gram Panchayat, Samalta in the election, held in the year 2003. He has assumed the duties as Gram Pradhan in Gram Pradhan Samalta, post Samalta, Tehsil Kalsi, District Dehradun. On 09.12.2004, District Magistrate, Dehradun issued a show cause notice by which nine chares were leveled against the petitioner. After receiving the said show cause notice, petitioner has submitted his reply on 13.01.2005. Thereafter, District Magistrate, Dehradun has passed the order seizing the financial & administrative power of the petitioner as gram Pradhan, as contained under section 95(1)(g) of the U.P. Panchayat Raj Act.

The petitioner has submitted that the rules were framed for removal of Pradhan under U.P. Panchayat Raj Act, known as U.P. Panchayat Raj (Removal of Pradhan, Up Pradhan and Members) Enquiry rules 1997. Rule 3 of the said rule provide that the complaint ought to have been filed along with the affidavits but in the present case no affidavit has been filed by the complainant, therefore, entire proceedings against the petitioner is illegal, arbitrary and against the provisions of law. Paragraphs 12 & 13 of the writ petition are quoted below:-

"12. That it is stated here that for removal of a Pradhan, the Governor, in exercise of powers, conferred under section 110 read with clause (g) of sub-section (1) of section 95 of Uttar Pradesh Panchayat Raj Act, has framed the Rules, known as Uttar Pradesh Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997 and in the said Rules, the procedures for enquiry have been provided. The rule 3 of Rules, 1997 provides the procedures, relating to complaint, whereas the rule 6 of Rules, 1997 provides the procedures for enquiry. For the kind perusal of this Hon'ble Court a photo copy of Rules, 1997 is being annexed herewith and is marked as ***Annexure No.6*** *to this writ petition.*

13. That the rule 3 of Rules, 1997 provides that the complaint ought to have been filed along with the affidavits of complainant and other persons, relating to acquisition, but in the present case, the complaint has not filed alongwith an affidavit or affidavit of other persons, relating to acquisition, but the enquiry officer, without any affidavit, proceeded for enquiry against the petitioner in violation of mandatory provisions, prescribed in rule 3 of Rules, 1997 and as such the entire proceedings, against the petitioner, is vitiated, illegal, arbitrary and against the provision of law.

Further grievance of the petitioner is that neither copy of the complaint nor other documents filed by the complainant were given to him. Paragraph 16 of the writ petition is quoted below:-

"16. That the petitioner has not been handed over the complaint and other document, relied upon by the enquiry officer and this fact shows that the petitioner has not been given reasonable opportunity to defend himself and as such the impugned order is illegal, arbitrary and against the principles of natural justice."

Counter affidavit has been filed by the respondents. It has been submitted in the counter affidavit, that show cause notice was issued by the District Magistrate after receiving enquiry report. According to the respondents, preliminary enquiry was conducted by the District Panchayat Raj Officer, Dehradun according to the provisions of Rule 4 for the U.P. Panchayat Raj (Removal of Pradhans, Up Pradhans and Members) Enquiry Rules, 1997.

According to the petitioner provisions made under Rules, 3 & 6 of Uttar Pradesh Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997, has not been followed while making enquiry against the Pradhan. In as much as the copies of complaint, affidavits, and documents filed by the complainant along with the charges have not been sent to the petitioner and as such proper inquiry has not been conducted according the prescribed procedure.

Rules 3 & 6 of the Uttar Pradesh Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997 are quoted below:-

"3. Procedure relating to complaints – *(1) any person making a complaint against a Pradhan or Up-Pradhan may sent his complaint to the state Government or any officer empowered in this behalf by the State Government-*

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complaint's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified

(2) Every complaint referred t in sub-rule (1) shall be accompanied by the complaint's own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary, together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this rule as well as any schedule or annexure thereto shall be verified in the manner land down in the Code of Civil Procdure, 1908 for the verification of pleadings and affidavits, respectively.

(4) Not less than three copies of the complaint as well as of each of its annexure shall be submitted by the complainant.

(5) A complaint which does not comply with any of the foregoing provisions of this rules shall not be entertained.

(6) It shall not be necessary to follow the procedure laid down in the foregoing provisions of this rule if a complaints against a Pradhan or Up-Pradhan is made by a public servant.

6. Procedure of the enquiry – *(1) The substance of the imputations, and a copy of the complaint referred to in Rule 3, if any, shall be forwarded to the Inquiry Officer by the State Government.*

(2) The Inquiry Officer shall draw up –

(a) the substance of the imputations into definite and distinct articles of charge; and

(b) a statement of the imputations in support of each article of charge, which shall contain a statement of all relevant facts and a list of documents by which, and list of witnesses by whom, the articles of charge are proposed to be sustained.

(3) the Inquiry Officer shall deliver or cause to be delivered to the person against whom he is to hold the enquiry, a copy of the articles of charge, the statement of the imputations and a

list of documents and witnesses by which each article of charge is proposed to be sustained and shall require that person by a notice in writing, to submit within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person, and to appear in person before him on such day and at such time as may be specified.

(4) On receipt of the written statement of defence, the Inquiry Officer shall enquire into such of that articles of charges as are not admitted and where all the article of chare have been admitted in the written statement of defence, the Inquiry Officer shall record his findings on each charge after taking such evidence as he may think fit.

(5) If the person who has not admitted any of the articles of charge in hi written statement of defence, appears before the Inquiry Officer, he shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the Inquiry Officer shall record the plea, sign the record and obtain the signature of that person thereon, and return a finding of guilt in respect of those charge."

In view of the above, a writ of certiorari is issued quashing the order dated 3.3.2005 passed by the District Magistrate, Dehradun. However, liberty is given to the District Magistrate to Initiate fresh proceedings under Section 95(1)(g) of Uttar Pradesh Panchayat Raj (Removal of Pradhan, Up-Pradhan and Members) Enquiry Rules, 1997 against the petitioner in accordance with law.

Subject to the observation made above, writ petition is allowed. No order as to costs.

21.07.2006 **(Rajesh Tandon, J.)**

Jain